HIGH COURT OF UTTARANCHAL AT NAINITAL

Reserved

A.O. No. 948 of 2001

(Old No. 319/1994)

Smt. Radha Devi & another …….Appellants

Versus

U.P.S.R.T.C. Muzaffarnagar … Respondents

Dated: June 29, 2004

Hon. M.M. Ghildiyal, J.
Hon. Rajesh Tandon, J.

Delivered by Hon. Rajesh Tandon J.

This is an appeal against the judgment and award dated 19.7.1994 passed by the Motor Accident Claims Tribunal, Nainital.

Briefly stated the facts giving rise to the present appeal are that on 23.12.1992 Gopal Singh was going to spinning Mill Jaspur by his cycle on the extreme left side of the road. When he reached near the gate of spinning mill, bus No. UP 15B 7533 of the respondent came from Afjalgarh side driven by its driver Munish Kumar in a rash and negligent manner. The bus hit deceased Gopal Singh due to which he sustained grievous injuries and he succumbed to the injuries instantaneously. The deceased was employed in Spinning Mills, Jaspur and was getting Rs. 1616.00 per month as salary.

The respondent has contested the claim petition and admitted the accident and death of deceased Gopal Singh in the accident. However, the respondent denied rash and negligent driving of the bus involved in the accident.

On the pleadings of the parties the following issues were framed:

(1) Whether the accident took place due to rash and negligent driving of UPSRTC bus no. UP 15-B 7533 by its driver?

(2) Whether the vehicle of UPSTRC did not involve in the accident as alleged in W.S. of O.P.? If so, its effect?

(3) To what amount of compensation are the claimants entitled?

The learned Claims Tribunal has held that the accident took place due to rash and negligent driving of bus No. UP 15-B 7533. He after calculating the amount of compensation awarded a sum of Rs. 63,600/- to the petitioners. Feeling aggrieved the present appeal has been preferred by the claimants appellants.

We have heard the learned counsel for the parties and have gone through the record.

The contention of the appellants is that the learned claims tribunal has not properly calculated the amount of compensation and the amount awarded is too meagre.

Petitioner Smt. Radha Devi has examined herself as P.W. 1. She stated on oath that her husband Gopal singh was employed in Spinning Mill and was getting Rs. 1616.00 per month as salary. She stated that at the time of accident the age of her husband was 26 years. The petitioners also filed salary certificate granted by U.P. State Textile Corporation Ltd; which

is paper no. 11-C. The salary of the deceased has been shown as Rs. 1616.00 per month. It has also been mentioned in the certificate that according to the service record of the deceased his age on 23.12.1992 was 26 years 6 months and 18 days, P.W.1 Smt. Radha Devi has stated on oath that after the death of her husband she and her minor child have left behind in the family. Thus it is amply proved that the deceased was employed in the spinning mill and was getting Rs. 1616/- per month as salary. At the time of his death the deceased was 26 years of age.

Out of the monthly salary of the deceased one third amount has to be deducted for own expenses of the deceased if he would have been alive. After deducting one third of the amount the annual dependency of the petitioners on the income of the deceased comes to Rs. 12,000/-. Considering the age of the deceased a multiplier of 16 is to be applied and thus the amount of compensation come to Rs. 1,92,000/-. The petitioners also claimed compensation on account of loss of consortium and loss of love and affection. The petitioners are also entitled to get the expenses incurred in the last rites of the deceased. A consolidated amount of Rs. 8,000/- on all these counts would be sufficient compensation. Thus the petitioners are entitled to get a total compensation of Rs. 2,00,000/-.

The appeal is allowed with costs. The appellants are awarded a sum of Rs. 2, 00,000/- as compensation along with pendent lite and future interest at the rate of 9% per annum.

(Rajesh Tandon J.) **(M.M. Ghildiyal J.)**

June 29, 2004
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